

Specification Types

There are many types of specifications. (<http://www.window.state.tx.us/procurement/pub/manual/2-23.pdf>) This Guide will focus on two (2) of the most common types: Performance Based Specifications and Design Specifications.

Performance Based Specifications vs. Design Specifications

Performance based specifications focus on outcomes or results rather than process, and the required goods and services rather than how the goods and services are produced. Conversely, design specifications outline exactly how the contractor must perform the service or how the product is made. Performance based specifications allow respondents to bring their own expertise, creativity and resources to the bid process without restricting them to predetermined methods or detailed processes. This allows the respondents to provide the product or service at less cost and shifts some of the risk to the contractors. For example, if a state agency utilizes a design specification for a unit of laboratory equipment, and the equipment does not work correctly, then the results may be the fault of the specification. However, if the agency wrote a performance based specification, the unit must operate properly in order to meet the performance standards.

For example, consider the purchase of media and advertising services:

Performance Based Specification: Contractor shall provide media services for Texas Tourism which shall increase the tourist dollars by a minimum of three (3) percent in the next fiscal year. Visits by out of state tourists shall increase a minimum of ten (10) percent. These figures will be measured as reported by the Texas Chamber of Commerce.

Design Specifications: Contractor shall conduct at least seven (7) media campaigns for Texas Tourism during the fiscal year. Three (3) of these campaigns must be directed to out of state tourists.

Mixed Specifications: Contractor shall provide media services for Texas Tourism which shall include a minimum of seven (7) media campaigns during the fiscal year. Media services shall provide for a minimum increase of three (3) percent in the next fiscal year as measured and reported by the Texas Chamber of Commerce.

As you can see, the performance based specification focuses on results, whereas the design specification focuses on resources. With design specifications, the contractor may provide all seven (7) campaigns, but the desired result of increased tourist dollars and visits may or may not occur.

As with all performance measures, agencies must ensure that performance specifications are reasonable and measurable. Note that the specification clearly outlines how the results will be measured. While performance based contracts are sometime preferable, when using this type of specification the planning, expertise and contract management may be different than design specifications.

Design specifications are appropriate for simple purchases of goods such as paper, pens, furniture, and services such as temporary staff. Usually these purchases are accomplished by defining specific quantities and specifications for the goods or services, price per unit, as well as requirements for the time, place and manner for delivery and acceptance.

Incentives: Many agencies now include incentives in their contract language. Incentives are used for outstanding performance which exceeds the goals contained in the contract. For example, if state tourism dollars increased by five (5) percent, the contract language sets forth a pre-established monetary incentive for increases above the required three (3) percent.

Performance based specifications are fashioned so that respondents are allowed maximum flexibility when satisfying the requirements of a solicitation whereas, design specifications limit flexibility. It is not always beneficial to use performance based specifications. Examples of when to use performance or design specifications are provided below:

- **New installation, entire system provided by one vendor.** A performance based specification should be used as it will allow the most economical solution to be applied since it is an entirely new system.
- **New installation, system provided by various suppliers.** In this case, the agency may need to use a design specification to ensure that all of the characteristics of the system will work together. For example, a project to bid out the HVAC controls, chillers, fire alarms, etc. will all need to work together.
- **Expansion of an existing installation.** A design specification would be required in this instance as the new equipment must connect and integrate with the existing system.

Organization of the Statement of Work

One way of organizing the statement of work is to divide each of the general contracting objectives into logical parts. Contracts, like projects, are often divided into phases, such as planning, development, implementation and operation or planning, equipment, installation, testing, operation and maintenance. The specific phases should support the subject matter and purpose of the contract. Phases can be further divided into small components of work (segments) and deliverables can be defined within each segment.

Elements of a Deliverable

Each deliverable in a solicitation should include the following elements:

1. A description of the work.
2. A standard for performance.
3. Test conditions, method or procedure to verify that the deliverable meets with the standard.
4. A method or process to monitor and/or ensure quality in the deliverable.
5. An acceptance process for each deliverable.
6. A compensation structure that is consistent with the type and value of work performed.
7. A contractual remedy, if appropriate.

The statement of work should provide a clear and thorough description of the goods or services to be provided. If appropriate, provide the relevant environment where the product/service will be used. In certain types of procurements, it may be critical to describe the existing business processes. If the existing business process will change as a result of the procurement, then also describe what the business process will be after the procurement objectives are completed. If agencies want the respondents to suggest new business processes, ensure that this information is included in the solicitation.

Contract Term

A reasonable contract term compliant with all applicable law must be established prior to solicitation and must be included in the solicitation document. All contracts must have a specific ending date. Indefinite contracts are generally prohibited. As a general policy, it's recommended that the maximum time for contracts without reissuing a competitive solicitation be four (4) years. This includes any renewal or extension periods. Individual business needs may dictate a different period and agencies should consult their legal counsel for advice on this matter early in the planning process.

Contracts which extend into the next biennium must include a "funding out" clause:

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply.

In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. See Excess Obligations.

(<http://www.window.state.tx.us/procurement/pub/manual/2-24.pdf>)

Additional information regarding contract terms are discussed in Chapter 6 – Contract Formation.